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HOUSE BILL 289

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO WATER; IMPOSING WATER RESOURCE FEES FOR THE  
DIVERSION OR WITHDRAWAL OF PUBLIC WATERS OF THE STATE;  
RECONCILING AMENDMENTS TO SECTION 72-4A-5 NMSA 1978 (BEING LAWS  
2001, CHAPTER 164, SECTION 5, AS AMENDED BY LAWS 2003, CHAPTER  
139, SECTION 3 AND BY LAWS 2003, CHAPTER 365, SECTION 1);  
MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 8 of this act may be cited as the "Water Resource Fee  
Act".

Section 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Water Resource Fee Act:

A. "acequia association" means an association of  
landowners along a community ditch or acequia that is

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1 recognized under Chapter 73, Article 2 NMSA 1978 and not  
2 otherwise subject to assessments by any irrigation, conservancy  
3 or artesian conservancy district organized pursuant to Chapter  
4 73, Article 1, 9, 10 or 14 NMSA 1978;

5 B. "domestic well" means a well permitted pursuant  
6 to Section 72-12-1.1 NMSA 1978;

7 C. "person" means any individual or legal entity;  
8 and

9 D. "public water supply system" means a system that  
10 supplies water to the public and that has at least fifteen  
11 service connections or regularly services an average of twenty-  
12 five individuals at least sixty days per year.

13 Section 3. [NEW MATERIAL] WATER RESOURCE FEES--  
14 IMPOSITION--EXCEPTIONS.--

15 A. In order to exercise the right to use the public  
16 waters of the state, the following water resource fees are  
17 imposed on the following persons who divert or withdraw the  
18 public waters of the state:

19 (1) irrigation districts, conservancy  
20 districts and artesian conservancy districts organized pursuant  
21 to Chapter 73, Article 1, 9, 10 or 14 of NMSA 1978, two dollars  
22 (\$2.00) per acre-foot per year paid annually;

23 (2) persons other than an acequia association  
24 supplying water for agricultural uses for which the fees  
25 imposed by this subsection have not otherwise been imposed, two

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1 dollars (\$2.00) per acre-foot per year paid annually;

2 (3) persons operating a public water supply  
3 system, twenty-five dollars (\$25.00) per acre-foot per year  
4 paid annually;

5 (4) persons supplying water for a commercial,  
6 industrial, mining or utility concern and for which the fees  
7 imposed by this subsection have not otherwise been imposed or  
8 paid, twenty-five dollars (\$25.00) per acre-foot per year paid  
9 annually; and

10 (5) persons owning a domestic well, a fixed  
11 annual fee of twenty-five dollars (\$25.00) per well paid  
12 annually.

13 B. With the exception of domestic wells that are  
14 assessed a fixed annual fee, the water resource fee shall be  
15 based on the actual diversion or withdrawal of water if  
16 measured by a metering system approved by the state engineer;  
17 otherwise, fees shall be based on the amount of the permitted,  
18 declared or adjudicated water right.

19 C. The following water users and uses are exempt  
20 from water resource fees imposed by the Water Resource Fee Act:

21 (1) water diverted or withdrawn by the  
22 interstate stream commission, state parks division of the  
23 energy, minerals and natural resources department and the  
24 department of game and fish for public use or benefit;

25 (2) water diverted or withdrawn for

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1 agricultural use by a member of an acequia association on the  
2 member's land;

3 (3) water diverted or withdrawn from a  
4 livestock well permitted pursuant to Section 72-12-1.2 NMSA  
5 1978 for livestock watering; and

6 (4) water diverted or withdrawn by an Indian  
7 nation, tribe or pueblo on tribal or pueblo lands.

8 Section 4. [NEW MATERIAL] PAYMENT OF WATER RESOURCE FEE--  
9 EVIDENCE OF WATER RIGHT.--Payment of fees imposed by the Water  
10 Resource Fee Act neither confirms nor is evidence of any right  
11 to appropriate the public waters of the state.

12 Section 5. [NEW MATERIAL] DOMESTIC WELL WATER RESOURCE  
13 FEE--COLLECTION.--

14 A. The county assessor shall collect the water  
15 resource fee imposed by the Water Resource Fee Act on domestic  
16 well owners. The annual fee shall be assessed with the  
17 property tax bill for the property on which the domestic well  
18 is located. The county assessor shall remit the water resource  
19 fee collected to the taxation and revenue department within  
20 thirty days of receipt.

21 B. The state engineer shall provide the county  
22 assessor of each county with the addresses of the owners and  
23 locations of domestic wells within the county.

24 Section 6. [NEW MATERIAL] OTHER WATER RESOURCE FEES--  
25 COLLECTION--INFORMATION.--

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1           A. The taxation and revenue department shall  
2 provide by regulation for the manner and form of collection of  
3 the water resource fees imposed by the Water Resource Fee Act.

4           B. The taxation and revenue department shall  
5 provide the state engineer with an annual report on the amount  
6 of fees collected for each type of user specified in the Water  
7 Resource Fee Act.

8           C. The state engineer, interstate stream  
9 commission, department of environment and public regulation  
10 commission shall provide the taxation and revenue department  
11 with the information and records necessary to assess the fees  
12 imposed by the Water Resource Fee Act other than the fee  
13 imposed on domestic well owners.

14           Section 7. [NEW MATERIAL] WATER RESOURCE FEES--  
15 DISPOSITION.--Money distributed to the state engineer pursuant  
16 to the Water Resource Fee Act is appropriated to the state  
17 engineer for research related to water conservation, active  
18 water rights administration, water rights adjudications,  
19 updating and maintaining the state engineer's WATERS database  
20 and providing information to the counties and the taxation and  
21 revenue department necessary for the collection of fees imposed  
22 by the Water Resource Fee Act.

23           Section 8. [NEW MATERIAL] WATER RESOURCE FEES--  
24 DISPOSITION.--Money distributed to the interstate stream  
25 commission pursuant to the Water Resource Fee Act is

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1 appropriated to the commission to administer the New Mexico  
2 irrigation works construction fund and to manage water rights  
3 acquired by state agencies for public use and benefit,  
4 including compliance with interstate compact requirements,  
5 recreation purposes, stream ecosystem restoration and the  
6 enhancement of fish and wildlife populations and habitat.

7 Section 9. A new section of the Tax Administration Act is  
8 enacted to read:

9 "[NEW MATERIAL] ADMINISTRATIVE FEE IMPOSED.--The  
10 department shall withhold an administrative fee of five percent  
11 of the receipts collected pursuant to the Water Resource Fee  
12 Act."

13 Section 10. A new section of the Tax Administration Act  
14 is enacted to read:

15 "[NEW MATERIAL] DISTRIBUTIONS--WATER RESOURCE FEES.--  
16 Distributions pursuant to Section 7-1-6.1 NMSA 1978 shall be  
17 made to the following agencies and funds in the specified  
18 amounts from the receipts attributable to the water resource  
19 fees less any administrative fee withheld by the department:

- 20 A. to the office of the state engineer, eight  
21 percent of receipts;
- 22 B. to the interstate stream commission, two percent  
23 of receipts;
- 24 C. to the water project fund, sixty percent of  
25 receipts; and

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1 D. to the New Mexico irrigation works construction  
2 fund, thirty percent of receipts."

3 Section 11. Section 7-1-2 NMSA 1978 (being Laws 1965,  
4 Chapter 248, Section 2, as amended) is amended to read:

5 "7-1-2. APPLICABILITY.--The Tax Administration Act  
6 applies to and governs:

7 A. the administration and enforcement of the  
8 following taxes or tax acts as they now exist or may hereafter  
9 be amended:

- 10 (1) Income Tax Act;
- 11 (2) Withholding Tax Act;
- 12 (3) Venture Capital Investment Act;
- 13 (4) Gross Receipts and Compensating Tax Act  
14 and any state gross receipts tax;
- 15 (5) Liquor Excise Tax Act;
- 16 (6) Local Liquor Excise Tax Act;
- 17 (7) any municipal local option gross receipts  
18 tax;
- 19 (8) any county local option gross receipts  
20 tax;
- 21 (9) Special Fuels Supplier Tax Act;
- 22 (10) Gasoline Tax Act;
- 23 (11) petroleum products loading fee, which fee  
24 shall be considered a tax for the purpose of the Tax  
25 Administration Act;

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- 1 (12) Alternative Fuel Tax Act;
- 2 (13) Cigarette Tax Act;
- 3 (14) Estate Tax Act;
- 4 (15) Railroad Car Company Tax Act;
- 5 (16) Investment Credit Act, Capital Equipment
- 6 Tax Credit Act, rural job tax credit, Laboratory Partnership
- 7 with Small Business Tax Credit Act and Technology Jobs Tax
- 8 Credit Act;

- 9 (17) Corporate Income and Franchise Tax Act;
- 10 (18) Uniform Division of Income for Tax
- 11 Purposes Act;

- 12 (19) Multistate Tax Compact;
- 13 (20) Tobacco Products Tax Act; and
- 14 (21) the telecommunications relay service
- 15 surcharge imposed by Section 63-9F-11 NMSA 1978, which
- 16 surcharge shall be considered a tax for the purposes of the Tax
- 17 Administration Act;

18 B. the administration and enforcement of the

19 following taxes, surtaxes, advanced payments or tax acts as

20 they now exist or may hereafter be amended:

- 21 (1) Resources Excise Tax Act;
- 22 (2) Severance Tax Act;
- 23 (3) any severance surtax;
- 24 (4) Oil and Gas Severance Tax Act;
- 25 (5) Oil and Gas Conservation Tax Act;

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- 1 (6) Oil and Gas Emergency School Tax Act;  
2 (7) Oil and Gas Ad Valorem Production Tax Act;  
3 (8) Natural Gas Processors Tax Act;  
4 (9) Oil and Gas Production Equipment Ad

5 Valorem Tax Act;

6 (10) Copper Production Ad Valorem Tax Act;

7 (11) any advance payment required to be made  
8 by any act specified in this subsection, which advance payment  
9 shall be considered a tax for the purposes of the Tax

10 Administration Act;

11 (12) Enhanced Oil Recovery Act;

12 (13) Natural Gas and Crude Oil Production  
13 Incentive Act; and

14 (14) intergovernmental production tax credit  
15 and intergovernmental production equipment tax credit;

16 C. the administration and enforcement of the  
17 following taxes, surcharges, fees or acts as they now exist or  
18 may hereafter be amended:

19 (1) Weight Distance Tax Act;

20 (2) the workers' compensation fee authorized  
21 by Section 52-5-19 NMSA 1978, which fee shall be considered a  
22 tax for purposes of the Tax Administration Act;

23 (3) Uniform Unclaimed Property Act;

24 (4) 911 emergency surcharge and the network  
25 and database surcharge, which surcharges shall be considered

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1 taxes for purposes of the Tax Administration Act;

2 (5) the solid waste assessment fee authorized  
3 by the Solid Waste Act, which fee shall be considered a tax for  
4 purposes of the Tax Administration Act;

5 (6) the water conservation fee imposed by  
6 Section 74-1-13 NMSA 1978, which fee shall be considered a tax  
7 for the purposes of the Tax Administration Act; ~~and~~

8 (7) the gaming tax imposed pursuant to the  
9 Gaming Control Act; and

10 (8) the water resource fees imposed pursuant  
11 to the Water Resource Fee Act, which fees shall be considered a  
12 tax for the purposes of the Tax Administration Act; and

13 D. the administration and enforcement of all other  
14 laws, with respect to which the department is charged with  
15 responsibilities pursuant to the Tax Administration Act, but  
16 only to the extent that the other laws do not conflict with the  
17 Tax Administration Act."

18 Section 12. Section 72-4A-5 NMSA 1978 (being Laws 2001,  
19 Chapter 164, Section 5, as amended by Laws 2003, Chapter 139,  
20 Section 3 and by Laws 2003, Chapter 365, Section 1) is amended  
21 to read:

22 "72-4A-5. BOARD--DUTIES.--The board shall:

23 A. adopt rules governing terms and conditions of  
24 grants or loans recommended by the board for appropriation by  
25 the legislature from the water project fund, giving priority to

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1 projects [~~that have urgent needs, that have been identified for~~  
2 ~~implementation of~~] identified as being urgent to meet the needs  
3 of a regional water planning area that has had a completed  
4 regional water plan [~~that is~~] accepted by the interstate stream  
5 commission and that have matching contributions from federal or  
6 local funding sources and that have obtained all requisite  
7 state and federal permits and authorizations necessary to  
8 initiate the project;

9 B. authorize qualifying water projects to the  
10 authority that are for:

11 (1) storage, conveyance or delivery of water  
12 to end users;

13 (2) implementation of federal Endangered  
14 Species Act of 1973 collaborative programs;

15 (3) restoration and management of watersheds;

16 (4) flood prevention; [~~or~~]

17 (5) state acquisition or lease of water rights  
18 from voluntary sellers or lessors for public use and benefit,  
19 including compliance with interstate compacts, recreation  
20 purposes, stream ecosystem restoration and the enhancement of  
21 fish and wildlife populations and habitat; or

22 [~~(5) water~~] (6) conservation, recycling,  
23 treatment or reuse of water as provided by law; and

24 C. create a drought strike team to coordinate  
25 responses to emergency water shortages caused by drought

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1 conditions."

2 Section 13. Section 72-4A-9 NMSA 1978 (being Laws 2001,  
3 Chapter 164, Section 9) is amended to read:

4 "72-4A-9. WATER PROJECT FUND--CREATED--PURPOSE.--

5 A. The "water project fund" is created in the New  
6 Mexico finance authority and shall consist of distributions  
7 made to the fund from the water trust fund and payments of  
8 principal of and interest on loans for approved water projects.  
9 The fund shall also consist of any other money appropriated,  
10 distributed or otherwise allocated to the fund for the purpose  
11 of supporting water projects pursuant to provisions of the  
12 Water Project Finance Act. The fund shall be administered by  
13 the authority. Income from investment of the water project  
14 fund shall be credited to the fund. Balances in the fund at  
15 the end of any fiscal year shall not revert to the general  
16 fund. The water project fund may consist of such sub-accounts  
17 as the authority deems necessary to carry out the purposes of  
18 the fund. The authority may establish procedures and adopt  
19 rules as required to administer the fund and to recover from  
20 the fund costs of administering the fund and originating grants  
21 and loans.

22 B. Money in the water project fund may be used to  
23 make loans or grants to qualified entities for any project  
24 approved by the legislature.

25 C. The authority is authorized to issue revenue

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1 bonds payable from the proceeds of loan repayments made into  
2 the water project fund upon a determination by the authority  
3 that issuance of the bonds is necessary to replenish the  
4 principal balance of the fund. The net proceeds from the sale  
5 of the bonds shall be deposited in the water project fund. The  
6 bonds shall be authorized and issued by the authority in  
7 accordance with the provisions of the New Mexico Finance  
8 Authority Act.

9 D. Fifty percent of the amount distributed to the  
10 water project fund pursuant to the Water Resource Fee Act shall  
11 be used only for water conservation projects benefiting public  
12 water systems that pay water resource fees. All other amounts  
13 distributed to the fund pursuant to that act shall be expended  
14 for water conservation projects, restoration and management of  
15 watersheds and the acquisition or lease from voluntary sellers  
16 or lessors of water rights for public use and benefit,  
17 including compliance with interstate compacts, recreation  
18 purposes, stream ecosystem restoration and the enhancement of  
19 fish and wildlife populations and habitat."

20 Section 14. Section 72-14-23 NMSA 1978 (being Laws 1955,  
21 Chapter 266, Section 15, as amended) is amended to read:

22 "72-14-23. NEW MEXICO IRRIGATION WORKS CONSTRUCTION FUND  
23 CREATED--LIMITATION OF LIABILITY UNDER ACT--REPARATION OF  
24 DAMAGES CAUSED IN CARRYING OUT POWERS GRANTED--AUTHORITY OF  
25 COMMISSION TO RECEIVE CONTRIBUTIONS.--

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1           A. There is [~~hereby~~] created a fund to be known  
2 as the "New Mexico irrigation works construction fund", which  
3 shall consist of the income creditable to the permanent  
4 reservoirs for irrigation purposes income fund not otherwise  
5 pledged under Section [~~75-34-19 New Mexico Statutes Annotated,~~  
6 ~~1953 Compilation, (being Laws 1955, chapter 266, section 11)~~]  
7 72-14-19 NMSA 1978 and all other [~~moneys which~~] money that may  
8 be appropriated by the [~~state~~] legislature to [~~said~~] the  
9 construction fund. [~~Such~~] The fund shall be a continuing fund  
10 and shall not revert to the general fund [~~of the state~~] or to  
11 any other fund [~~of the state at the end of any biennium~~].

12           B. The cost of investigations and construction as  
13 authorized in Section [~~75-34-11 New Mexico Statutes Annotated,~~  
14 ~~1953 Compilation (being Laws 1955, Chapter 266, Section 3)~~]  
15 72-14-11 NMSA 1978 shall be paid from [~~said~~] the New Mexico  
16 irrigation works construction fund and also the cost of all  
17 preliminary work on any project, and all expenses directly  
18 chargeable to such project, prior to the receipt of the  
19 proceeds of bonds, shall be paid from the construction fund.  
20 The amount of all such expenses on account of any project [~~or~~  
21 ~~projects~~] and such part of the general administrative expenses  
22 of the commission and the cost of investigation [~~or~~  
23 ~~investigations~~] as shall be properly chargeable, in the opinion  
24 of the commission, to such project [~~or projects~~] shall be  
25 reimbursed to the construction fund upon the receipt of the

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1 proceeds of bonds issued for such project [~~or projects~~]. No  
2 liability or obligation shall be incurred under the provisions  
3 of Sections [~~75-34-9 to 75-34-27 New Mexico Statutes, 1953~~  
4 ~~Compilation (being Laws 1955, Chapter 266, Sections 1 to 19)~~]  
5 72-14-9 through 72-14-28 NMSA 1978 beyond the extent to which  
6 the money [~~shall have~~] has been provided under the authority of  
7 [~~this act~~] those sections. All public and private property  
8 damaged or destroyed in carrying out the powers granted under  
9 [~~this act~~] those sections shall be restored or repaired and  
10 placed in [~~their~~] its original condition, as nearly as  
11 practicable, or adequate compensation made therefor out of  
12 funds provided by [~~this act~~] those sections.

13 C. The commission shall also have authority to pay  
14 the cost of such investigations and construction on any project  
15 from [~~said~~] the New Mexico irrigation works construction fund  
16 when contracts in form satisfactory to it [~~shall~~] have been  
17 entered into whereby title to works [~~shall~~] have been  
18 mortgaged, deeded, assigned or transferred by the owner  
19 [~~thereof~~] to the commission, and a program for reimbursement of  
20 all amounts expended, together with operation and maintenance  
21 charges, [~~shall~~] have been agreed upon. Provided that no  
22 construction contract shall be entered into without the prior  
23 approval of the state board of finance. The commission shall  
24 also have authority to receive and accept appropriations and  
25 contributions from any source of either money or property or

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1 other things of value to be held, used and applied for the  
2 purposes [~~in this act~~] provided in Sections 72-14-9 through  
3 72-14-28 NMSA 1978.

4 D. Money distributed to the New Mexico irrigation  
5 works construction fund pursuant to the Water Resource Fee Act  
6 shall be expended for water conservation projects, including  
7 the metering and monitoring of water withdrawals and diversions  
8 that benefit persons diverting or withdrawing water for  
9 agricultural uses or districts supplying water to irrigators  
10 who have paid fees imposed by that act."

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